

HOGAN & HARTSON
L.L.P.

EX PARTE OR LATE FILED

DAVID L. SIERADZKI
COUNSEL
DIRECT DIAL (202) 637-6482
INTERNET DSQ@DC2.HHLAW.COM

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910

April 20, 1999

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Federal-State Joint Board on Universal Service,
CC Docket No. 96-45

Dear Ms. Salas:

I am writing on behalf of Western Wireless Corporation to inform you that my colleague Michele C. Farquhar and I made an *ex parte* presentation today to Bob Loube and Richard Smith of the Accounting Policy Division, Common Carrier Bureau, and David Krech of the Commercial Wireless Division, Wireless Telecommunications Bureau. The presentation covered arguments that Western Wireless has raised in response to the Further Notice of Proposed Rulemaking in this proceeding, issued October 16, 1998, regarding universal service policies that could facilitate competitive entry by wireless and other carriers in high-cost areas. The attached materials were handed out during the presentation.

If you have any questions, please contact me.

Respectfully submitted,

David Sieradzki

David L. Sieradzki
Counsel for Western Wireless Corp.

Enclosures

cc: Bob Loube
Richard Smith
David Krech

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List A B C D E

WESTERN WIRELESS CORPORATION

**STATE BARRIERS TO ETC DESIGNATION
FOR FEDERAL SUPPORT**

Colorado

According to the rules of the Colorado Public Utility Commission, a carrier applying for USF eligibility must comply with the Commission's rules relating to local exchange service, which in turn require certification, tariffing, price regulation and operating authority (723-41-8). Furthermore, US West has argued in Colorado that the services of a competitive ETC must be "affordable," "substitutable" for the service of the incumbent, and "comparable" to the service of the incumbent.

Nevada

Nevada regulations require that a carrier hold a certificate of public convenience and necessity in order to be designated as an ETC (NAC 704.680461). A competitive ETC in Nevada must also serve the incumbent telephone company's service area, unless the carrier petitions the Nevada Public Utility Commission to establish a different service area (NAC 704.680463). US West argues in Nevada that the services of a competitive ETC must be "affordable," "substitutable" for the service of the incumbent, and "comparable" to the service of the incumbent.

North Dakota

The incumbents in North Dakota have argued that a carrier applying for ETC status must first provide and advertise the supported services before receiving the eligibility designation. Incumbents have also argued that designating additional carriers for eligibility is not in the public interest because the designation of an additional ETC could harm rural telephone companies and their ability to provide affordable service to consumers.

Oklahoma

In Oklahoma, the staff of the Public Utility Commission is openly opposed to the application of Western Wireless for ETC designation. Staff have argued that, if wireless local loops are used to provide the supported services, the wireless carrier must obtain a certificate of public convenience and necessity from the commission. They have also argued that a carrier must first provide and advertise the supported services prior to designation as an ETC. In addition, commission staff make the more philosophical argument that universal service funding for mobile services is contrary to the intent of the federal universal service statute. Finally, enhanced 911 service must be provided, according to Oklahoma commission staff, because it is in the public interest.

South Dakota

Staff of the South Dakota Public Service Commission are openly opposed to the designation of Western Wireless as an ETC. Staff have argued that the "public interest" will only be served if the Commission establishes and reviews the rates of ETC carriers. South Dakota commission staff also seek to require complete, 100% coverage, without any holes, over the entire service area, as well as a commitment to offering unlimited local usage. Incumbent carriers in South Dakota have argued that, if wireless local loops are used to provide the supported services, the wireless carrier must obtain a certificate of public convenience and necessity from the commission. They have also argued that a carrier must first provide and advertise the supported services prior to designation as an ETC. Incumbents also advocate the philosophical argument that universal service funding for mobile services is contrary to the intent of the federal universal service statute.

Texas

The Texas Commission staff is holding the ETC application of Western Wireless in abatement, pending a decision by the FCC on its October 1998 FNPRM. Commission staff have the false impression that this federal proceeding will address issues related to whether wireless carriers should receive ETC designation from states. Texas Commission staff also take the position that supported services must be provided prior to receiving ETC designation.

Last updated 4/9/99

Western Wireless Corporation
CASE STUDY
February 1999

**WESTERN WIRELESS'
WIRELESS RESIDENTIAL SERVICE IN REGENT, NORTH DAKOTA**

On January 7, 1999, Western Wireless' launched its universal service offering in Regent, North Dakota, called Wireless Residential Service. Western Wireless launched its entry into the universal service market prior to being designated as an ETC -- and prior to receiving universal service funding -- in order to underscore its commitment to serving the communication needs of consumers in high-cost areas. Regent, North Dakota falls clearly in the category of a rural, high-cost area. With a population of 268 spread out over a large geographical area and a calculated cost of more than \$200.00 per month for local telephone service, Regent is truly a rural, high-cost area.

Western Wireless' Wireless Residential Service in Regent is priced at \$14.99 per month for unlimited local usage with a local calling area that includes Regent, Mott, New England, Elgin, Burt, New Leipzig, and Dickinson, North Dakota. This compares with a rate of \$16.00 per month and a local calling area of Regent, New England, and Mott offered by the incumbent local exchange carrier ("ILEC"). The expanded local calling area offered by Western Wireless is a significant benefit to the Regent consumers because it allows them to place local calls to the only major business/residential community in the area, Dickinson, which is approximately 50 miles from Regent. Clearly, this is precisely the type of local

competition envisioned by the Telecommunications Act of 1996 ("1996 Act") and the Federal Communications Commission's ("FCC") rules.

However, the Regent experience demonstrates that introducing local competition in rural markets can be much more difficult than one might think. Upon Western Wireless initiating its Wireless Residential Service in Regent, the local ILEC summarily and unilaterally disconnected Western Wireless' interconnection trunk and local phone numbers a few days later. Western Wireless has sought relief from the ILEC's unlawful and outrageous action from both the North Dakota Public Service Commission and the FCC, and the U.S. District Court.¹ This episode is characteristic of the difficulties new entrants in rural areas may face.

It is clear that the ability of Western Wireless to offer Wireless Residential Service in Regent is dependent upon the establishment of a competitive universal service system that allows competitive carriers to serve the communications needs of high-cost consumers by receiving universal service funding to cover its costs, while at the same time being assured that regulatory rules and policies are in place to protect them from possible anti-competitive actions on the part of incumbents. The FCC and state commissions must, therefore, take the following steps to enable the competitive offerings of the services supported by universal service.

¹ On February 1, 1999, Consolidated turned-up service to Western Wireless and its customers.

Universal Service Funds Must Be Available To Competitive Carriers.

Under the current universal service rules, competitive carriers have access to only a very limited amount of federal funding to provide the supported services in territories served by the rural telephone companies. A forward-looking cost model for calculating the costs of providing service and determining the level of funding is not slated to go into effect until the year 2001 for territories served by rural telephone companies, like Regent (a forward looking model is slated to go into effect in July 1999 for non-rural telephone companies). The delay in implementing a forward-looking cost model for rural telephone company territories severely disadvantages competitive carriers because incumbents continue to receive various forms of subsidies to cover its costs of providing service in high-cost areas whereas competitive carriers are eligible to receive only a fraction of the cost of providing service.

In Regent, for example, the cost of service based upon forward-looking cost models is more than \$200.00, which the ILEC recovers through implicit and explicit funding, but a competitive carrier, like Western Wireless, is eligible to receive less than \$25.00 per month (total support available from the high cost loop fund, long term support, and local switching support). It therefore becomes imperative to make explicit and portable funding that is currently available to incumbents but not competitive carriers. For territories served by rural telephone companies, a forward looking cost model should be used to determine the level of support available to competitive carriers, even if the model does not apply to incumbents until the year 2001.

Universal Service Funding Must Be Made Immediately Available To Carriers Providing The Supported Services. Under Parts 36 and 54 of the FCC's Rules, on July 31, competitive carriers are required to identify the number of high-cost lines served as of December 31 of the previous year, which will determine the level of funding available beginning on January 1 of the following year. In the Regent case, where Western Wireless introduced service in January 1999, under the current FCC rules, Western Wireless would not identify the number of lines served in Regent until July 31, 2000 and funding would not be available until January 1, 2001 – two years after Western Wireless began providing service in Regent. The FCC should revise its rules to provide immediate funding for high-cost lines served by a carrier.

The FCC Should Provide Universal Service Funding Based Upon The Cost Of Service In A Specific Wire Center, Not Based Upon The Cost of Service Averaged Over An ILEC's Study Area. The Federal-State Universal Service Joint Board recently recommended that universal service funding for an area serviced by wire center should be based upon the average cost of service in an ILEC's study area, rather than the specific cost of service within a wire center as previously concluded by the FCC. The following example illustrates the barrier to entry imposed as a result of providing universal service funding on a study area basis, rather than on a wire center basis.

U S West in North Dakota serves many low-cost areas where the cost of service is as low as \$12.00 per month (e.g., wire center USW1) and several high-cost areas where the cost of service is as high as \$250 per month (e.g., wire center USW2). Under the current FCC

rules, a competitive telecommunications carrier that serves U S West high cost area USW2 would be eligible for universal service funding based upon the \$250.00 per month cost. Under the Federal-State Universal Service Joint Board recommendation, universal service funding would be based upon U S West's averaged costs in a study area, which has been calculated to be \$20.75 per month. Consequently, a competitive carrier that serves the area served by USW2 would only be eligible for \$20.75 per month in universal service funding, which would be a barrier to competitive entry into rural high cost areas and would result in the ILECs continuing to possess exclusive control over service in these areas, thereby depriving rural consumers of the benefit of a competitive market.

The FCC Should Allow CMRS Carriers To Recover Access Charges From IXCs. Today, CMRS carriers do not receive access charges from IXCs for terminating long distance calls, unlike ILECs and competitive local exchange carriers. In Regent, Western Wireless will be originating and terminating long distance calls for IXCs, but is not able to collect access charges for providing this service. The FCC should allow (but not require) CMRS carriers to impose access charges (by filing tariffs) on IXCs for originating and terminating long distance calls.

The FCC Should Reaffirm The Criteria For Designating ETCs By State Commissions. Unless the FCC reaffirms that the express statutory criteria for designating ETCs is the sole criteria for designating ETCs, competitive carriers, like Western Wireless, will face entrenched incumbents and sympathetic state commissions bent on foreclosing

competitive carriers from entering a previously-foreclosed market. The FCC should reaffirm that the sole criteria for designating ETCs for federal and state universal service support is: (1) the carrier is a common carrier; (2) the carrier is capable of offering the supported services using its own facilities or a combination of its own facilities and resale of another carrier's services; (3) the carrier commits to offering the supported services throughout the service area designated by the state commission; (4) the carrier commits to advertising the availability, and charges for, the services offered; and (5) in territories served by rural telephone companies, the designation is in the public interest.

The FCC And State Commissions Must Take Immediate Action Against Anti-Competitive Conduct by ILECs. Faced with anti-competitive conduct by the ILECs, such as that by the ILEC in Regent, North Dakota, the FCC and state commissions must take immediate action to restore service and prevent any further anti-competitive practices by the ILEC.

*Western Wireless urges the FCC and state regulators to make decisions that promote
COMPETITIVE AND TECHNOLOGICAL NEUTRALITY
and CONSUMER CHOICE.*

Gene DeJordy
Executive Director, Regulatory Affairs
WESTERN WIRELESS CORPORATION
3650 - 131st Ave., S.E., Suite 400
Bellevue, WA 98006
(425) 586-8055

Michele C. Farquhar
David L. Sieradzki
HOGAN & HARTSON, L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5600

PREVIOUS BILL:ALL | NEXT BILL:ALL
NEW SEARCH | HOME | HELP

S.1354

Public Law: 105-125 (12/01/97)

SPONSOR: Sen McCain (introduced 10/31/97)

Jump to: Titles, Status, Committees, Amendments, Cosponsors, Summary

TITLE(S):

- **OFFICIAL TITLE AS INTRODUCED:**

A bill to amend the Communications Act of 1934 to provide for the designation of common carriers not subject to the jurisdiction of a State commission as eligible telecommunications carriers.

STATUS: Floor Actions

12/01/97 Public Law 105-125 (12/15/97 CR H10962)

11/19/97 Measure presented to President (12/15/97 CR S12717)

11/18/97 Enrolled Measure signed in Senate (12/15/97 CR S12716)

11/17/97 Enrolled Measure signed in House (12/15/97 CR H10960)

11/13/97 Measure passed House (CR H10809)

11/13/97 Measure considered in House (CR H10807-10809)

11/13/97 Measure called up under motion to suspend rules and pass in House (CR H10807)

11/12/97 Referred to House Committee on Commerce (CR H10765)

11/09/97 Measure passed Senate(CR S12425)

11/09/97 Measure considered in Senate (CR S12425)

11/09/97 Measure called up by unanimous consent in Senate (CR S12425)

11/08/97 Reported to Senate from Committee on Commerce, Science, and Transportation (without written report) (CR S12118)

STATUS: Detailed Legislative Status

Senate Actions

Oct 31, 97:

Read twice and referred to the Committee on Commerce.

Nov 4, 97:

Committee on Commerce. Ordered to be reported without amendment favorably.

Nov 8, 97:

Committee on Commerce. Reported to Senate by Senator McCain without amendment.
Without written report.

Placed on Senate Legislative Calendar under General Orders. Calendar No. 289.

Nov 9, 97:

Passed Senate without amendment by Unanimous Consent.

Nov 12, 97:

Message on Senate action sent to the House.

House Actions

Nov 12, 97:

Referred to the House Committee on Commerce.

Nov 13, 97:

Called up by House under suspension of the rules.

Executive Actions

Nov 13, 97:

Cleared for White House.

Nov 19, 97:

Presented to President.

Dec 1, 97:

Became Public Law No: 105-125.

Signed by President.

STATUS: Congressional Record Page References

10/31/97 Introductory remarks on Measure (CR S11546)

11/09/97 Full text of Measure as passed Senate printed (CR S12425)

11/13/97 Full text of Measure as passed House printed (CR H10807)

COMMITTEE(S):

- COMMITTEE(S) OF REFERRAL:
Senate Commerce, Science, and Transportation
House Commerce
- COMMITTEE(S) REPORTING:
Senate Commerce, Science, and Transportation

AMENDMENT(S):

NONE

COSPONSORS(5):

Sen Campbell - 10/31/97 Sen Inouye - 10/31/97

Sen Daschle - 10/31/97 Sen Dorgan - 10/31/97

Sen Stevens - 11/05/97

SUMMARY:

(AS INTRODUCED)

Amends the Communications Act of 1934 to direct the Federal Communications Commission (FCC), upon request, to designate a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission as an eligible telecommunications carrier (eligible to receive universal service support) for a telephone service area designated by the FCC.

Authorizes the FCC, with respect to an area served by a rural telephone company, and requires the FCC, in the case of all other areas, to designate more than one common carrier as an eligible carrier for such a designated service area, provided each additional requesting carrier meets eligibility requirements. Requires the FCC, before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, to find that such designation is in the public interest.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1352

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraphs (2) and (3) of Rule 30(b) of the Federal Rules of Civil Procedure are amended to read as follows:

"(2) Unless the court upon motion orders, or the parties stipulate in writing, the deposition shall be recorded by stenographic means. The party taking the deposition shall bear the cost of the transcription. Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means.

"(3) With prior notice to the deponent and other parties, any party may use another method to record the deponent's testimony in addition to the method used pursuant to paragraph (2). The additional record or transcript shall be made at that party's expense unless the court otherwise orders."

By Mr. MCCAIN (for himself, Mr. CAMPBELL, Mr. INOUE, Mr. DASCHLE, and Mr. DORGAN):

S. 1354. A bill to amend the Communications Act of 1934 to provide for the designation of common carriers not subject to the jurisdiction of a State commission as eligible telecommunications carriers; to the Committee on Commerce, Science, and Transportation.

THE COMMUNICATIONS ACT OF 1934 TECHNICAL AMENDMENT ACT OF 1997

Mr. MCCAIN. Mr. President, I rise to introduce an amendment to the Communications Act of 1934 on behalf of Senators DORGAN, DASCHLE, INOUE, CAMPBELL, and myself. This amendment enables the Federal Communications Commission [FCC] to designate common carriers not under the jurisdiction of a State commission as eligible recipients of universal service support.

Universal Service provides intercarrier support for the provision of telecommunications services in rural and high-cost areas throughout the United States. However, section 254(e) of the 1996 act states that only an eligible carrier designated under section 214(e) of the Communications Act shall be eligible to receive specific federal universal support after the FCC issues regulations implementing the new universal service provisions into the law. Section 214(e) does not account for the fact that State commissions in a few states have no jurisdiction over certain carriers. Typically, States also have no jurisdiction over tribally owned companies which may or may not be regulated by a tribal authority that is not a State commission per se.

The failure to account for these situations means that carriers not subject to the jurisdiction of a State commission have no way of becoming an eligible carrier that can receive universal service support. This would be the case whether these carriers are traditional local exchange carriers that provide services otherwise included in the program, have previously obtained universal service support, or will likely be

the carrier that continues to be the carrier of last resort for customers in the area.

Mr. President. This simple amendment will address this oversight within the 1996 act, and prevent the unintentional consequences it will have on common carriers which Congress intended to be covered under the umbrella of universal service support.

By Mr. LIEBERMAN (for himself and Mr. DODD):

S. 1355. A bill to designate the U.S. courthouse located in New Haven, CT, as the "Richard C. Lee United States Courthouse"; to the Committee on Environment and Public Works.

THE RICHARD C. LEE FEDERAL COURTHOUSE ACT OF 1997

Mr. LIEBERMAN. Mr. President, I am pleased and honored today to introduce legislation with my colleague Senator DODD to name the Federal courthouse in New Haven, CT, after our dear friend and the former eight-term mayor of New Haven, Richard C. Lee. Congresswoman ROSA DELAURO is introducing the same proposal in the House of Representatives.

If it may be said that Federal buildings should help reflect the very best of the principles, purposes and spirit of America, then this courthouse could have no more appropriate name above its doors than that of Mayor Lee. For Dick Lee is the quintessential American, proud, principled, hardworking, and productive. In New Haven, he shook loose entrenched bureaucracies and forged new community coalitions dedicated to rebuilding New Haven after years of neglect and blight. He became a nationally recognized urban pioneer and helped to change the landscape of the American city.

Dick Lee was born in New Haven. He loves the city and its richly diverse people. In May of last year, Mayor Lee was honored by the New Haven Colony Historical Society. During that tribute, Prof. Robert Wood of Wesleyan University drew inspiration from Mayor Lee's eloquence about his work. Dick Lee said that the core of a mayor's job was "wiping away tears from the eyes" of a city's people so that "each tear becomes a star in the sky" and not a source of daily despair. "Filling the sky above with stars" was his highest calling. "The tears in the eyes of the young and the old, the hungry, the unloved, the ill-housed, the ill-clothed, and worst of all, the ignored" were not to be tolerated.

Dick Lee was raised in a devout Irish Catholic family that was not blessed with wealth but with greater gifts: with faith, talent, and the willingness to work hard to better themselves and their community. He served for many years on the Board of Aldermen of New Haven and held a number of journalism jobs, including 10 years in public relations at Yale University. In 1949, he became the youngest man to run for mayor in New Haven's history. He lost that year by 712 votes. He lost 2 years

later by only two votes. But he did not give up on himself, or the city of New Haven and was elected mayor in 1953.

Once in office, Dick Lee devoted himself with extraordinary energy and imagination to the human and physical renewal of New Haven. One of his most provocative ideas was that the greatest post-World War II problems in our cities—poverty, unemployment, and poor housing—could not be solved by the cities or States alone. The Federal Government had to become a partner in America's urban redevelopment.

Dick Lee worked tirelessly and with enormous success during the Eisenhower Administration to bring Federal programs to New Haven. As head of the Urban Committee of the Democratic National Committee in 1958, Lee authored the first versions of Model Cities and War on Poverty legislative proposals. And after his dear friend, John F. Kennedy was elected, Dick Lee exercised a large and constructive influence on the national effort to renew America's urban areas and to restore hope and opportunity to the people who lived in them.

Dick Lee also understood that just as the human face of New Haven needed reinvigoration, so did the city's physical appearance and infrastructure. For this, Dick Lee turned first to a plan by Maurice Rovital who developed a blueprint for New Haven while a member of the Yale faculty. But then he boldly invited many of America's greatest architects to design buildings for his city, making New Haven one of America's greatest architectural crossroads.

Dick Lee appointed a deputy mayor and administrator of redevelopment. From there, the real work began. That work included rebuilding downtown New Haven, salvaging the Long Wharf area, restoring Wooster Square, constructing the Knights of Columbus headquarters and the Coliseum, residential rehabilitation, rent supplements, nonprofit housing sponsors and the renewal of inner-city neighborhoods.

Mayor Lee forged new coalitions to reaffirm his city's sense of community and make it easier to get things done. His Citizens Action Commission was a unique amalgam of business, labor and civic leaders and was designed to build support for the redevelopment effort.

Robert Dahl, in his book "Who Governs? Democracy and Power in the American City," wrote that Mayor Lee "had an investment banker's willingness to take risks that held the promise of large long-run payoffs, and a labor mediator's ability to head off controversy by searching out areas for agreement by mutual understanding, compromise, negotiation, and bargaining."

He possessed a detailed knowledge of the city and its people, a formidable information gathering system, and an unceasing, full-time preoccupation with all aspects of his job. His relentless drive to achieve his goals meant that he could be tough and ruthless. But toughness was not his political style, for his overriding strategy was to rely on persuasion rather than threats.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. SESSIONS. I ask unanimous consent that the bill be deemed read the third time, and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1511) was deemed read the third time, and passed, as follows:

S. 1511

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CLARIFICATION OF AUTHORITY.

(a) CLARIFICATION.—Section 3165 of the National Defense Authorization Act of Fiscal Year 1998 is amended—

(1) in subsection (b)(1), by striking out "under the jurisdiction" and all that follows through "Los Alamos National Laboratory" and inserting in lieu thereof "under the jurisdiction or administrative control of the Secretary at or in the vicinity of Los Alamos National Laboratory"; and

(2) in subsection (e), by striking out "the Secretary of the Interior" and all that follows through the end and inserting in lieu thereof "but not later than 90 days after the submittal of the report under subsection (d)(1)(C), the County and the Pueblo shall submit to the Secretary an agreement between the County and the Pueblo which allocates between the County and the Pueblo the parcels identified for conveyance or transfer under subsection (b)."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the provisions of section 3165 of the National Defense Authorization Act for Fiscal Year 1998 to which such amendments relate.

ELIGIBLE TELECOMMUNICATIONS CARRIERS ACT OF 1997

Mr. SESSIONS. I ask unanimous consent that the Senate now proceed to the consideration of calendar No. 289, S. 1354.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1354) to amend the Communications Act of 1934 to provide for the designation of common carriers not subject to the jurisdiction of a State commission as eligible telecommunications carriers.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the bill be considered read the third time, and passed, the motion to reconsider laid upon the table, and that any statements relating to the bill appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1354) was considered read the third time, and passed, as follows:

S. 1354

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT OF COMMUNICATIONS ACT OF 1934.

Section 214(e) of the Communications Act of 1934 (47 U.S.C. 214(e)) is amended—

(1) by striking "(2) or (3)" in paragraph (1) and inserting "(2), (3), or (6)";

(2) by striking "interstate services," in paragraph (3) and inserting "interstate services or an area served by a common carrier to which paragraph (6) applies";

(3) by inserting "(or the Commission in the case of a common carrier designated under paragraph (6))" in paragraph (4) after "State commission" each place such term appears;

(4) by inserting "(or the Commission under paragraph (6))" in paragraph (5) after "State commission"; and

(5) by inserting after paragraph (5) the following:

"(6) COMMON CARRIERS NOT SUBJECT TO STATE COMMISSION JURISDICTION.—In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest."

DISTRIBUTION OF JUDGMENT FUNDS OF THE OTTAWA AND CHIPPEWA INDIANS OF MICHIGAN

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 1604 just received from the House.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1604) to provide for the division, use, and distribution of judgment funds of the Ottawa and Chippewa Indians of Michigan, pursuant to dockets 18-E, 58, 364, and 18-R before the Indian Claims Commission.

AMENDMENTS NOS. 1625 AND 1627, EN BLOC

Mr. SESSIONS. Mr. President, I send two amendments, en bloc, to the desk on behalf of Mr. MURKOWSKI and Mr. INOUE and ask for their immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alabama [Mr. SESSIONS], for Mr. MURKOWSKI and Mr. INOUE, proposes amendments numbered 1625 and 1627, en bloc.

Mr. SESSIONS. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 1625

(Purpose: To limit the number of health care contracts and compacts that the Indian Health Service may execute for the Ketchikan Gateway Borough)

At the appropriate place, insert:

SECTION 1. FINDINGS.

Congress finds that—

(1) the execution of more than 1 contract or compact between an Alaska native village or regional or village corporation in the Ketchikan Gateway Borough and the Secretary to provide for health care services in an area with a small population leads to duplicative and wasteful administrative costs; and

(2) incurring the wasteful costs referred to in paragraph (1) leads to decrease in the quality of health care that is provided to Alaska Natives in an affected area.

SECTION 2. DEFINITIONS.

In this Act:

(1) ALASKA NATIVE.—The term "Alaska Native" has the meaning given the term "Native" in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

(2) ALASKA NATIVE VILLAGE OR REGIONAL OR VILLAGE CORPORATION.—The term "Alaska native village or regional or village corporation" means an Alaska native village or regional or village corporation defined in, or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(3) CONTRACT; COMPACT.—The terms "contract" and "compact" mean a self-determination contract and a self-governance compact as these terms are defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(4) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

SEC. 3. LIMITATION.

(a) IN GENERAL.—The Secretary shall take such action as may be necessary to ensure that, in considering a renewal of a contract or compact, or signing of a new contract or compact for the provision of health care services in the Ketchikan Gateway Borough, there will be only one contract or compact in effect.

(b) CONSIDERATION.—In any case in which the Secretary, acting through the Director of the Indian Health Service, is required to select from more than 1 application for a contract or compact described in subsection (a), in awarding the contract or compact, the Secretary shall take into consideration—

(1) the ability and experience of the applicant;

(2) the potential for the applicant to acquire and develop the necessary ability; and

(3) the potential for growth in the health care needs of the covered borough.

AMENDMENT NO. 1627

(Purpose: To provide for a technical correction to Section 2 concerning the Sault Ste. Marie)

On page 2, line 7, of Section 2, delete the word "Tribe" and insert the word "Band".

The PRESIDING OFFICER. The question is on agreeing to the amendments, en bloc.

The amendments (Nos. 1625 and 1627) were agreed to.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the bill, as amended, be considered read the third time, and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed in the RECORD at the appropriate place.

"(A) unless the entity with whom the Secretary has entered into the agreement under paragraph (2), following notice and a 90-day response period, fails to meet the terms and conditions of the agreement; or

"(B) unless the number of free roaming horses on Federal lands within Cape Lookout National Seashore exceeds 110; or

"(C) except in the case of an emergency, or to protect public health and safety.

"(4) The Secretary shall annually monitor, assess, and make available to the public findings regarding the population, structure, and health of the free roaming horses in the national seashore.

"(5) Nothing in this subsection shall be construed to require the Secretary to replace horses or otherwise increase the number of horses within the boundaries of the seashore where the herd numbers fall below 100 as a result of natural causes, including, but not limited to, disease or natural disasters.

"(6) Nothing in this subsection shall be construed as creating liability for the United States for any damages caused by the free roaming horses to property located inside or outside the boundaries of the seashore."

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from North Carolina [Mr. JONES] and the gentleman from Michigan [Mr. KILDEE] each will control 20 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. JONES].

Mr. JONES. Mr. Speaker, I yield myself such time as I may consume.

(Mr. JONES asked and was given permission to revise and extend his remarks.)

Mr. JONES. Madam Speaker, I rise in support of S. 731 and urge its adoption. The bill grants a 5-year extension to the legislative authority for the construction of the National Peace Garden Memorial on Federal lands within the District of Columbia.

Madam Speaker, section 10(b) of the Commemorative Works Act of 1986 provides that the legislative authority to construct a memorial expires 7 years after the date the memorial was authorized by Congress. In 1994, Congress extended the legislative authority for the National Peace Garden Memorial through June 30, 1997. S. 731 would extend the legislative authority for the National Peace Garden Memorial until June 30, 2002.

Madam Speaker, S. 731 has been amended to incorporate H.R. 765, a bill I introduced to protect the Shackleford Banks Wild Horses at Cape Lookout National Seashore in North Carolina. The House passed H.R. 765 on July 22, 1997, by a vote of 416 to 6.

Since that time, the Senate has amended the House-passed bill to clarify several management issues of concern to the National Park Service. The amendment to S. 731 offered today reflects the amendments agreed to by the majority and minority members of the Senate Committee on Energy and Natural Resources.

Madam Speaker, S. 713 will assure that a healthy survival herd of wild roaming horses will remain on the Cape Lookout National Seashore, and their 400-year history will continue as a major legacy of the culture and heritage of the Outer Banks of North Carolina.

Madam Speaker, I strongly urge my colleagues to support S. 731 as amended.

Madam Speaker, I reserve the balance of my time.

Mr. KILDEE. Madam Speaker, I yield myself such time as I may consume.

(Mr. KILDEE asked and was given permission to revise and extend his remarks.)

Mr. KILDEE. Madam Speaker, S. 731 as passed by the Senate is an uncontroversial measure to extend the authority of the National Peace Garden Foundation to establish a commemorative work in honor of our Nation's commitment to peace. The majority has sent S. 731 to the desk with an amendment that includes the modified text of another bill, H.R. 765, that the House passed in July.

The language of H.R. 765, which deals with the wild horses at Cape Lookout National Seashore, has been worked out in the Senate, and that bill is currently pending before the full Senate.

Madam Speaker, I urge the adoption of this bill.

Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. JONES. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina [Mr. JONES] that the House suspend the rules and pass the Senate bill, S. 731, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. JONES. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 731, as amended.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

AMENDING COMMUNICATIONS ACT OF 1934

Mr. BLILEY. Madam Speaker, I move to suspend the rules and pass the Senate bill (S. 1354) to amend the Communications Act of 1934 to provide for the designation of common carriers not subject to the jurisdiction of a State commission as eligible telecommunications carriers.

The Clerk read as follows:

S. 1354

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT OF COMMUNICATIONS ACT OF 1934.

Section 214(e) of the Communications Act of 1934 (47 U.S.C. 214(e)) is amended—

(1) by striking "(2) or (3)" in paragraph (1) and inserting "(2), (3), or (6)";

(2) by striking "interstate services." in paragraph (3) and inserting "interstate services or an area served by a common carrier to which paragraph (6) applies";

(3) by inserting "(or the Commission in the case of a common carrier designated under paragraph (6))" in paragraph (4) after "State commission" each place such term appears;

(4) by inserting "(or the Commission under paragraph (6))" in paragraph (5) after "State commission"; and

(5) by inserting after paragraph (5) the following:

"(6) COMMON CARRIERS NOT SUBJECT TO STATE COMMISSION JURISDICTION.—In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest."

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia [Mr. BLILEY] and the gentleman from Massachusetts [Mr. MARKEY] each will control 20 minutes.

The Chair recognizes the gentleman from Virginia [Mr. BLILEY].

GENERAL LEAVE

Mr. BLILEY. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 1354.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. BLILEY. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in support of S. 1354. S. 1354 was brought to the Committee on Commerce's attention by the gentleman from Arizona [Mr. HAYWORTH]. He informed the committee that a technical amendment to the Communications Act was necessary to avoid local telephone rate increases in certain parts of the Nation. The committee has reviewed the bill and agrees that action by the House is necessary at this time.

Under the current universal service provisions of the Communications Act, only common carriers designated by the States are eligible to receive Federal universal service support. Unfortunately, this policy ignores the fact that some common carriers providing service today are not subject to the jurisdiction of a State commission; most

notably, some carriers owned or controlled by native Americans. Thus, many of these common carriers may lose Federal support on January 1, 1998, unless Congress takes action.

S. 1354 corrects this problem by permitting a common carrier that is not subject to State authority to be designated by the Federal Communications Commission as eligible to receive Federal universal service support. S. 1354 will apply to only a limited number of carriers, but to these carriers' customers, its impacts will be significant.

It should be noted that nothing in this bill is intended to restrict or expand the existing jurisdiction of State commissions over any common carrier. Such determinations are outside the scope of this legislation.

I thank the gentleman from Arizona [Mr. HAYWORTH] for his thoughtful action on this matter and for working with the gentleman from South Dakota [Mr. THUNE]. I also thank the Members of the other body for taking action on this important matter. I ask that all Members support passage of S. 1354.

Madam Speaker, I yield such time as he may consume to the gentleman from Arizona [Mr. HAYWORTH].

Mr. HAYWORTH. Madam Speaker, I would like to thank my colleague from Virginia, the distinguished chairman of the Committee on Commerce [Mr. BLILEY] for his consideration and cooperation in this regard.

Madam Speaker, I rise in strong support of S. 1354, and I would be remiss if I did not also take this time to thank the ranking minority member of the Committee on Commerce, the gentleman from Michigan [Mr. DINGELL], for his help as well.

Madam Speaker, it is safe to say this is a good bipartisan bill. This legislation was sponsored in the other body by my colleague from Arizona Senator MCCAIN, and I would like to publicly thank our senior Senator for his hard work on this issue.

Madam Speaker, as the chairman mentioned, this bill corrects a technical glitch in section 214(e) of the Communications Act of 1934 that has created a serious problem for certain telecom carriers, particularly some Indian tribes. The current language in section 214(e) does not account for the fact that State commissions in some States have no jurisdiction over certain carriers. Some, not all, but some States have no jurisdiction over tribal-owned carriers, which may or may not be regulated by a tribal authority that is not a State commission per se. This is especially true in my home State of Arizona and also in South Dakota.

The failure to account for these situations means that such carriers may have no way of being designated as a carrier eligible to receive Federal universal service support which provides intercarrier support for the provision of telecommunications services in rural and high-cost areas throughout the United States.

Section 214 as currently written does not consider whether a tribal-owned carrier is a traditional incumbent local exchange carrier that provides the core universal services, whether they have previously received Federal universal support or whether they will be deemed a carrier of last resort to serve every customer in their service area.

In my home State of Arizona, there are four tribal authority telephone cooperatives that are not subject to State jurisdiction. Passing this bill would ensure that these entities can continue to serve their customers as eligible carriers.

Without this bill, Madam Speaker, customers of these carriers could face enormous rate increases. For instance, if Gila River in my district in Arizona lost its Federal universal service support, its customers could be hit with a \$32 monthly charge per subscriber starting this January, so it is critical that we pass this bill now to protect these consumers.

Again, I would like to thank my esteemed colleague, the gentleman from Virginia [Mr. BLILEY] for agreeing to bring this bill forward, and I would urge a "yes" vote from all of our colleagues.

Mr. BLILEY. Madam Speaker, I reserve the balance of my time.

Mr. MARKEY. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, this legislation represents a finetuning of provisions of the Telecommunications Act of 1996 that addresses the universal service system. The bill before us today allows a common carrier that is not subject to the jurisdiction of a State commission, including those telephone companies owned by certain federally-recognized Indian tribes, to be designated by the Federal Communications Commission as an eligible telecommunications carrier for universal service funding purposes.

The Telecommunications Act of 1996 stipulated that State commissions are authorized to designate which telephone companies are so-called eligible telecommunications carriers for purposes of universal service funding. The provisions of the Telecommunications Act, however, did not account for the fact that in a few instances, States have no jurisdiction over telephone companies owned by certain federally-recognized Indian tribes. Because States have no jurisdiction in this area, such companies would have no way of becoming designated as eligible telecommunications carriers and receive universal service support.

□ 1330

This bill is a technical correction to the statute that is entirely consistent with the Telecommunications Act of 1996. The bill ensures that telephone companies currently receiving support for universal service can continue to do so whether the designation of eligible telecommunications carrier is made by

the State commission or, in the case of a company not subject to State jurisdiction, by the Federal Communications Commission.

I want to congratulate the gentleman from Virginia [Mr. BLILEY], for his work on this issue; the gentleman from South Dakota [Mr. THUNE] for his work on this issue; and the gentleman from Arizona [Mr. HAYWORTH] for his work in ensuring that we do have an equitable and universal application of a plan constructed in the 1930's which has served our Nation well.

The universal service system of telecommunications was originated as good economic policy: Let us bring the whole country together, not just the 35 or 40 percent that had telephones in the middle of the 1930's, but let us have every home in America with access to it.

It turned out to be not just good economic policy, but it turned out to be good social policy as well because it helped to knit our country together, that families could call each other wherever they were in the country, business could be conducted anywhere in the country. This amendment seeks to clarify an omission so that these particular Indian tribes are not excluded, and I want to congratulate the Members that have brought the issue to our attention.

Madam Speaker, I reserve the balance of my time.

Mr. BLILEY. Madam Speaker, I yield myself such time as I may consume.

Mr. THUNE. Madam Speaker, will the gentleman yield?

Mr. BLILEY. I yield to the gentleman from South Dakota.

Mr. THUNE. Madam Speaker, I want to credit the distinguished chairman for his hard work on this bill.

It is my understanding that the bill before us is specifically intended to provide a clear mechanism to designate eligible telecommunications carriers, pursuant to section 214(e) of the Communications Act of 1934, for common carriers not subject to the jurisdiction of State commissions, for purposes of the universal service fund. In essence, the bill would ensure such common carriers have access to universal service funds under section 214(e) of the Communications Act of 1934. Am I correct in that understanding?

Mr. BLILEY. Madam Speaker, the gentleman is correct. The Telecommunications Act of 1996 introduced a new requirement that State commissions determine which common carriers would be designated eligible for universal service funds. The act, however, did not contemplate that certain carriers may fall outside the jurisdiction of a State commission.

Mr. THUNE. Madam Speaker, I thank the gentleman. If the gentleman would yield further, I would like to ask one other question, if I might.

There are some that have expressed concerns that this bill may have implications beyond the question of determining eligibility for the universal

service fund to questions of jurisdiction between States and tribal entities. Am I correct in understanding that nothing in this bill is intended to expand or restrict the existing jurisdiction of State commissions over any common carrier or provider in any particular situation?

Mr. BLILEY. Madam Speaker, the gentleman is correct, that nothing in this bill is intended to impact litigation regarding jurisdiction between State and federally recognized tribal entities. Such determinations are outside the scope of this legislation. The intent of this bill is to cover such situations where a State commission lacks jurisdiction over a carrier, in which case the FCC determines who is eligible to receive Federal universal service support.

Mr. THUNE. Madam Speaker, I thank the gentleman from Virginia [Mr. BLILEY], the chairman of the committee, and I thank the gentleman from Massachusetts [Mr. MARKEY] and the gentleman from Arizona [Mr. HAYWORTH] for working with me to clarify this issue.

Mr. MARKEY. Madam Speaker, I yield myself such time as I may consume to again congratulate all of the Members who worked on this legislation, and to add in the name of the gentleman from Arizona [Mr. PASTOR], who is also quite concerned about this issue, and the gentleman from Michi-

gan [Mr. KILDEE], who has expressed great interest in ensuring that there is an equitable distribution of this benefit.

With that, I would hope that the Members of the House would accept this bill.

Mr. TAUZIN. Mr. Speaker, I rise in support of S. 1354. This bill would clarify a provision of the Communications Act regarding universal service. A change in the existing law is necessary to ensure that local telephone rates for Native Americans, and possibly other consumers, do not rise.

Universal Service is based on the premise that all Americans should have access to telephone service at affordable rates. This longstanding principle is beneficial to all Americans: the more people that are connected to the telephone network, the more valuable the network is to each of us.

Failure to enact S. 1354, may force rates to increase for local telephone service in many Native American communities as a result of certain carriers being excluded from the definition of an "eligible telecommunications carrier" under the Communications Act. S. 1354 makes a technical correction to the Act that will make it possible for telephone companies serving areas not subject to the jurisdiction of a State Commission, to be eligible to receive federal Universal Service support. The support will be necessary to keep local telephone rates affordable in these areas.

Supporting S. 1354 at this time is critical because federal support for many of these car-

riers that serve Native Americans may run out as early as January 1, 1998.

Let me take a moment to extend my appreciation to Mr. HAYWORTH of Arizona and Mr. THUNE of South Dakota for working together on this important matter. These gentlemen have been champions of this issue in the House and it is with their help that we are here today.

The other body has properly passed this bill and has sent it to the House for our consideration. I am hopeful that we can pass this bill and it can be signed into law relatively shortly.

I ask that all Members support S. 1354 and I reserve the balance of my time.

Mr. MARKEY. Madam Speaker, I yield back the balance of my time.

Mr. BLILEY. Madam Speaker, I thank the gentleman from Massachusetts for his kind words, and I urge the passage of the bill.

Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mrs. EMERSON). All time has expired.

The question is on the motion offered by the gentleman from Virginia [Mr. BLILEY] that the House suspend the rules and pass the Senate bill, S. 1354.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

NOTICE

Incomplete record of House proceedings. Except for the matter which follows, today's House proceedings will be continued in the next issue of the Record.

CONFERENCE REPORT ON H.R. 2267, DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

Mr. ROGERS submitted the following conference report and statement on the bill (H.R. 2267) making appropriations for the Department of Commerce, Justice, and State, the judiciary, and related agencies for the fiscal year ending September 30, 1998, and for other purposes:

CONFERENCE REPORT (H. REPT. 105-405)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2267) "making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1998, and for other purposes", having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

That the following sums are appropriated, out of any money in the Treasury not otherwise ap-

propriated, for the fiscal year ending September 30, 1998, and for other purposes, namely:

TITLE I—DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

SALARIES AND EXPENSES

For expenses necessary for the administration of the Department of Justice, \$76,199,000, of which not to exceed \$3,317,000 is for the Facilities Program 2000, to remain available until expended: Provided, That not to exceed 43 permanent positions and 44 full-time equivalent workyears and \$7,860,000 shall be expended for the Department Leadership Program exclusive of augmentation that occurred in these offices in fiscal year 1997: Provided further, That not to exceed 41 permanent positions and 48 full-time equivalent workyears and \$4,660,000 shall be expended for the Offices of Legislative Affairs and Public Affairs: Provided further, That the latter two aforementioned offices shall not be augmented by personnel details, temporary transfers of personnel on either a reimbursable or non-reimbursable basis or any other type of formal or informal transfer or reimbursement of personnel or funds on either a temporary or long-term basis.

COUNTERTERRORISM FUND

For necessary expenses, as determined by the Attorney General, \$20,000,000 to remain available until expended, to reimburse any Department of Justice organization for (1) the costs incurred in reestablishing the operational capability of an office or facility which has been damaged or destroyed as a result of any domestic or international terrorism incident, (2) the costs of providing support to counter, investigate or

prosecute domestic or international terrorism, including payment of rewards in connection with these activities, and (3) the costs of conducting a terrorism threat assessment of Federal agencies and their facilities: Provided, That funds provided under this paragraph shall be available only after the Attorney General notifies the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 605 of this Act.

In addition, for necessary expenses, as determined by the Attorney General, \$32,700,000, to remain available until expended, to reimburse departments and agencies of the Federal Government for any costs incurred in connection with—

(1) counterterrorism technology research and development;

(2) providing training and related equipment for chemical, biological, nuclear, and cyber attack prevention and response capabilities to State and local law enforcement agencies; and

(3) providing bomb training and response capabilities to State and local law enforcement agencies.

ADMINISTRATIVE REVIEW AND APPEALS

For expenses necessary for the administration of pardon and clemency petitions and immigration related activities, \$70,007,000.

VIOLENT CRIME REDUCTION PROGRAMS,

ADMINISTRATIVE REVIEW AND APPEALS

For activities authorized by section 130005 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322), as amended, \$59,251,000, to remain available until expended,

"(A) unless the entity with whom the Secretary has entered into the agreement under paragraph (2), following notice and a 90-day response period, fails to meet the terms and conditions of the agreement; or

"(B) unless the number of free roaming horses on Federal lands within Cape Lookout National Seashore exceeds 110; or

"(C) except in the case of an emergency, or to protect public health and safety.

"(4) The Secretary shall annually monitor, assess, and make available to the public findings regarding the population, structure, and health of the free roaming horses in the national seashore.

"(5) Nothing in this subsection shall be construed to require the Secretary to replace horses or otherwise increase the number of horses within the boundaries of the seashore where the herd numbers fall below 100 as a result of natural causes, including, but not limited to, disease or natural disasters.

"(6) Nothing in this subsection shall be construed as creating liability for the United States for any damages caused by the free roaming horses to property located inside or outside the boundaries of the seashore."

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from North Carolina [Mr. JONES] and the gentleman from Michigan [Mr. KILDEE] each will control 20 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. JONES].

Mr. JONES. Mr. Speaker, I yield myself such time as I may consume.

(Mr. JONES asked and was given permission to revise and extend his remarks.)

Mr. JONES. Madam Speaker, I rise in support of S. 731 and urge its adoption. The bill grants a 5-year extension to the legislative authority for the construction of the National Peace Garden Memorial on Federal lands within the District of Columbia.

Madam Speaker, section 10(b) of the Commemorative Works Act of 1986 provides that the legislative authority to construct a memorial expires 7 years after the date the memorial was authorized by Congress. In 1994, Congress extended the legislative authority for the National Peace Garden Memorial through June 30, 1997. S. 731 would extend the legislative authority for the National Peace Garden Memorial until June 30, 2002.

Madam Speaker, S. 731 has been amended to incorporate H.R. 765, a bill I introduced to protect the Shackleford Banks Wild Horses at Cape Lookout National Seashore in North Carolina. The House passed H.R. 765 on July 22, 1997, by a vote of 416 to 6.

Since that time, the Senate has amended the House-passed bill to clarify several management issues of concern to the National Park Service. The amendment to S. 731 offered today reflects the amendments agreed to by the majority and minority members of the Senate Committee on Energy and Natural Resources.

Madam Speaker, S. 713 will assure that a healthy survival herd of wild roaming horses will remain on the Cape Lookout National Seashore, and their 400-year history will continue as a major legacy of the culture and heritage of the Outer Banks of North Carolina.

Madam Speaker, I strongly urge my colleagues to support S. 731 as amended.

Madam Speaker, I reserve the balance of my time.

Mr. KILDEE. Madam Speaker, I yield myself such time as I may consume.

(Mr. KILDEE asked and was given permission to revise and extend his remarks.)

Mr. KILDEE. Madam Speaker, S. 731 as passed by the Senate is an uncontroversial measure to extend the authority of the National Peace Garden Foundation to establish a commemorative work in honor of our Nation's commitment to peace. The majority has sent S. 731 to the desk with an amendment that includes the modified text of another bill, H.R. 765, that the House passed in July.

The language of H.R. 765, which deals with the wild horses at Cape Lookout National Seashore, has been worked out in the Senate, and that bill is currently pending before the full Senate.

Madam Speaker, I urge the adoption of this bill.

Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. JONES. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina [Mr. JONES] that the House suspend the rules and pass the Senate bill, S. 731, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. JONES. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 731, as amended.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

AMENDING COMMUNICATIONS ACT OF 1934

Mr. BLILEY. Madam Speaker, I move to suspend the rules and pass the Senate bill (S. 1354) to amend the Communications Act of 1934 to provide for the designation of common carriers not subject to the jurisdiction of a State commission as eligible telecommunications carriers.

The Clerk read as follows:

S. 1354

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT OF COMMUNICATIONS ACT OF 1934.

Section 214(e) of the Communications Act of 1934 (47 U.S.C. 214(e)) is amended—

(1) by striking "(2) or (3)" in paragraph (1) and inserting "(2), (3), or (6)";

(2) by striking "interstate services" in paragraph (3) and inserting "interstate services or an area served by a common carrier to which paragraph (6) applies";

(3) by inserting "(or the Commission in the case of a common carrier designated under paragraph (6))" in paragraph (4) after "State commission" each place such term appears;

(4) by inserting "(or the Commission under paragraph (6))" in paragraph (5) after "State commission"; and

(5) by inserting after paragraph (5) the following:

"(6) COMMON CARRIERS NOT SUBJECT TO STATE COMMISSION JURISDICTION.—In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest."

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia [Mr. BLILEY] and the gentleman from Massachusetts [Mr. MARKEY] each will control 20 minutes.

The Chair recognizes the gentleman from Virginia [Mr. BLILEY].

GENERAL LEAVE

Mr. BLILEY. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 1354.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. BLILEY. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in support of S. 1354. S. 1354 was brought to the Committee on Commerce's attention by the gentleman from Arizona [Mr. HAYWORTH]. He informed the committee that a technical amendment to the Communications Act was necessary to avoid local telephone rate increases in certain parts of the Nation. The committee has reviewed the bill and agrees that action by the House is necessary at this time.

Under the current universal service provisions of the Communications Act, only common carriers designated by the States are eligible to receive Federal universal service support. Unfortunately, this policy ignores the fact that some common carriers providing service today are not subject to the jurisdiction of a State commission; most

notably, some carriers owned or controlled by native Americans. Thus, many of these common carriers may lose Federal support on January 1, 1998, unless Congress takes action.

S. 1354 corrects this problem by permitting a common carrier that is not subject to State authority to be designated by the Federal Communications Commission as eligible to receive Federal universal service support. S. 1354 will apply to only a limited number of carriers, but to these carriers' customers, its impacts will be significant.

It should be noted that nothing in this bill is intended to restrict or expand the existing jurisdiction of State commissions over any common carrier. Such determinations are outside the scope of this legislation.

I thank the gentleman from Arizona [Mr. HAYWORTH] for his thoughtful action on this matter and for working with the gentleman from South Dakota [Mr. THUNE]. I also thank the Members of the other body for taking action on this important matter. I ask that all Members support passage of S. 1354.

Madam Speaker, I yield such time as he may consume to the gentleman from Arizona [Mr. HAYWORTH].

Mr. HAYWORTH. Madam Speaker, I would like to thank my colleague from Virginia, the distinguished chairman of the Committee on Commerce [Mr. BLILEY] for his consideration and cooperation in this regard.

Madam Speaker, I rise in strong support of S. 1354, and I would be remiss if I did not also take this time to thank the ranking minority member of the Committee on Commerce, the gentleman from Michigan [Mr. DINGELL], for his help as well.

Madam Speaker, it is safe to say this is a good bipartisan bill. This legislation was sponsored in the other body by my colleague from Arizona Senator MCCAIN, and I would like to publicly thank our senior Senator for his hard work on this issue.

Madam Speaker, as the chairman mentioned, this bill corrects a technical glitch in section 214(e) of the Communications Act of 1934 that has created a serious problem for certain telecom carriers, particularly some Indian tribes. The current language in section 214(e) does not account for the fact that State commissions in some States have no jurisdiction over certain carriers. Some, not all, but some States have no jurisdiction over tribal-owned carriers, which may or may not be regulated by a tribal authority that is not a State commission per se. This is especially true in my home State of Arizona and also in South Dakota.

The failure to account for these situations means that such carriers may have no way of being designated as a carrier eligible to receive Federal universal service support which provides intercarrier support for the provision of telecommunications services in rural and high-cost areas throughout the United States.

Section 214 as currently written does not consider whether a tribal-owned carrier is a traditional incumbent local exchange carrier that provides the core universal services, whether they have previously received Federal universal support or whether they will be deemed a carrier of last resort to serve every customer in their service area.

In my home State of Arizona, there are four tribal authority telephone cooperatives that are not subject to State jurisdiction. Passing this bill would ensure that these entities can continue to serve their customers as eligible carriers.

Without this bill, Madam Speaker, customers of these carriers could face enormous rate increases. For instance, if Gila River in my district in Arizona lost its Federal universal service support, its customers could be hit with a \$32 monthly charge per subscriber starting this January, so it is critical that we pass this bill now to protect these consumers.

Again, I would like to thank my esteemed colleague, the gentleman from Virginia [Mr. BLILEY] for agreeing to bring this bill forward, and I would urge a "yes" vote from all of our colleagues.

Mr. BLILEY. Madam Speaker, I reserve the balance of my time.

Mr. MARKEY. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, this legislation represents a finetuning of provisions of the Telecommunications Act of 1996 that addresses the universal service system. The bill before us today allows a common carrier that is not subject to the jurisdiction of a State commission, including those telephone companies owned by certain federally-recognized Indian tribes, to be designated by the Federal Communications Commission as an eligible telecommunications carrier for universal service funding purposes.

The Telecommunications Act of 1996 stipulated that State commissions are authorized to designate which telephone companies are so-called eligible telecommunications carriers for purposes of universal service funding. The provisions of the Telecommunications Act, however, did not account for the fact that in a few instances, States have no jurisdiction over telephone companies owned by certain federally-recognized Indian tribes. Because States have no jurisdiction in this area, such companies would have no way of becoming designated as eligible telecommunications carriers and receive universal service support.

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This bill is a technical correction to the statute that is entirely consistent with the Telecommunications Act of 1996. The bill ensures that telephone companies currently receiving support for universal service can continue to do so whether the designation of eligible telecommunications carrier is made by

the State commission or, in the case of a company not subject to State jurisdiction, by the Federal Communications Commission.

I want to congratulate the gentleman from Virginia [Mr. BLILEY], for his work on this issue; the gentleman from South Dakota [Mr. THUNE] for his work on this issue; and the gentleman from Arizona [Mr. HAYWORTH] for his work in ensuring that we do have an equitable and universal application of a plan constructed in the 1930's which has served our Nation well.

The universal service system of telecommunications was originated as good economic policy: Let us bring the whole country together, not just the 35 or 40 percent that had telephones in the middle of the 1930's, but let us have every home in America with access to it.

It turned out to be not just good economic policy, but it turned out to be good social policy as well because it helped to knit our country together, that families could call each other wherever they were in the country, business could be conducted anywhere in the country. This amendment seeks to clarify an omission so that these particular Indian tribes are not excluded, and I want to congratulate the Members that have brought the issue to our attention.

Madam Speaker, I reserve the balance of my time.

Mr. BLILEY. Madam Speaker, I yield myself such time as I may consume.

Mr. THUNE. Madam Speaker, will the gentleman yield?

Mr. BLILEY. I yield to the gentleman from South Dakota.

Mr. THUNE. Madam Speaker, I want to credit the distinguished chairman for his hard work on this bill.

It is my understanding that the bill before us is specifically intended to provide a clear mechanism to designate eligible telecommunications carriers, pursuant to section 214(e) of the Communications Act of 1934, for common carriers not subject to the jurisdiction of State commissions, for purposes of the universal service fund. In essence, the bill would ensure such common carriers have access to universal service funds under section 214(e) of the Communications Act of 1934. Am I correct in that understanding?

Mr. BLILEY. Madam Speaker, the gentleman is correct. The Telecommunications Act of 1996 introduced a new requirement that State commissions determine which common carriers would be designated eligible for universal service funds. The act, however, did not contemplate that certain carriers may fall outside the jurisdiction of a State commission.

Mr. THUNE. Madam Speaker, I thank the gentleman. If the gentleman would yield further, I would like to ask one other question, if I might.

There are some that have expressed concerns that this bill may have implications beyond the question of determining eligibility for the universal

service fund to questions of jurisdiction between States and tribal entities. Am I correct in understanding that nothing in this bill is intended to expand or restrict the existing jurisdiction of State commissions over any common carrier or provider in any particular situation?

Mr. BLILEY. Madam Speaker, the gentleman is correct, that nothing in this bill is intended to impact litigation regarding jurisdiction between State and federally recognized tribal entities. Such determinations are outside the scope of this legislation. The intent of this bill is to cover such situations where a State commission lacks jurisdiction over a carrier, in which case the FCC determines who is eligible to receive Federal universal service support.

Mr. THUNE. Madam Speaker, I thank the gentleman from Virginia [Mr. BLILEY], the chairman of the committee, and I thank the gentleman from Massachusetts [Mr. MARKEY] and the gentleman from Arizona [Mr. HAYWORTH] for working with me to clarify this issue.

Mr. MARKEY. Madam Speaker, I yield myself such time as I may consume to again congratulate all of the Members who worked on this legislation, and to add in the name of the gentleman from Arizona [Mr. PASTOR], who is also quite concerned about this issue, and the gentleman from Michi-

gan [Mr. KILDEE], who has expressed great interest in ensuring that there is an equitable distribution of this benefit.

With that, I would hope that the Members of the House would accept this bill.

Mr. TAUZIN. Mr. Speaker, I rise in support of S. 1354. This bill would clarify a provision of the Communications Act regarding universal service. A change in the existing law is necessary to ensure that local telephone rates for Native Americans, and possibly other consumers, do not rise.

Universal Service is based on the premise that all Americans should have access to telephone service at affordable rates. This longstanding principle is beneficial to all Americans: the more people that are connected to the telephone network, the more valuable the network is to each of us.

Failure to enact S. 1354, may force rates to increase for local telephone service in many Native American communities as a result of certain carriers being excluded from the definition of an "eligible telecommunications carrier" under the Communications Act. S. 1354 makes a technical correction to the Act that will make it possible for telephone companies serving areas not subject to the jurisdiction of a State Commission, to be eligible to receive federal Universal Service support. The support will be necessary to keep local telephone rates affordable in these areas.

Supporting S. 1354 at this time is critical because federal support for many of these car-

riers that serve Native Americans may run out as early as January 1, 1998.

Let me take a moment to extend my appreciation to Mr. HAYWORTH of Arizona and Mr. THUNE of South Dakota for working together on this important matter. These gentlemen have been champions of this issue in the House and it is with their help that we are here today.

The other body has properly passed this bill and has sent it to the House for our consideration. I am hopeful that we can pass this bill and it can be signed into law relatively shortly.

I ask that all Members support S. 1354 and I reserve the balance of my time.

Mr. MARKEY. Madam Speaker, I yield back the balance of my time.

Mr. BLILEY. Madam Speaker, I thank the gentleman from Massachusetts for his kind words, and I urge the passage of the bill.

Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mrs. EMERSON). All time has expired.

The question is on the motion offered by the gentleman from Virginia [Mr. BLILEY] that the House suspend the rules and pass the Senate bill, S. 1354.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

NOTICE

Incomplete record of House proceedings. Except for the matter which follows, today's House proceedings will be continued in the next issue of the Record.

CONFERENCE REPORT ON H.R. 2267, DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

Mr. ROGERS submitted the following conference report and statement on the bill (H.R. 2267) making appropriations for the Department of Commerce, Justice, and State, the judiciary, and related agencies for the fiscal year ending September 30, 1998, and for other purposes:

CONFERENCE REPORT (H. REPT. 105-405)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2267) "making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1998, and for other purposes", having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

That the following sums are appropriated, out of any money in the Treasury not otherwise ap-

propriated, for the fiscal year ending September 30, 1998, and for other purposes, namely:

TITLE I—DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

SALARIES AND EXPENSES

For expenses necessary for the administration of the Department of Justice, \$76,199,000, of which not to exceed \$3,317,000 is for the Facilities Program 2000, to remain available until expended: Provided, That not to exceed 43 permanent positions and 44 full-time equivalent workyears and \$7,860,000 shall be expended for the Department Leadership Program exclusive of augmentation that occurred in these offices in fiscal year 1997: Provided further, That not to exceed 41 permanent positions and 48 full-time equivalent workyears and \$4,660,000 shall be expended for the Offices of Legislative Affairs and Public Affairs: Provided further, That the latter two aforementioned offices shall not be augmented by personnel details, temporary transfers of personnel on either a reimbursable or non-reimbursable basis or any other type of formal or informal transfer or reimbursement of personnel or funds on either a temporary or long-term basis.

COUNTERTERRORISM FUND

For necessary expenses, as determined by the Attorney General, \$20,000,000 to remain available until expended, to reimburse any Department of Justice organization for (1) the costs incurred in reestablishing the operational capability of an office or facility which has been damaged or destroyed as a result of any domestic or international terrorist incident, (2) the costs of providing support to counter, investigate or

prosecute domestic or international terrorism, including payment of rewards in connection with these activities, and (3) the costs of conducting a terrorism threat assessment of Federal agencies and their facilities: Provided, That funds provided under this paragraph shall be available only after the Attorney General notifies the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 605 of this Act.

In addition, for necessary expenses, as determined by the Attorney General, \$32,700,000, to remain available until expended, to reimburse departments and agencies of the Federal Government for any costs incurred in connection with—

(1) counterterrorism technology research and development;

(2) providing training and related equipment for chemical, biological, nuclear, and cyber attack prevention and response capabilities to State and local law enforcement agencies; and

(3) providing bomb training and response capabilities to State and local law enforcement agencies.

ADMINISTRATIVE REVIEW AND APPEALS

For expenses necessary for the administration of pardon and clemency petitions and immigration related activities, \$70,007,000.

VIOLENT CRIME REDUCTION PROGRAMS,

ADMINISTRATIVE REVIEW AND APPEALS

For activities authorized by section 130005 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322), as amended, \$59,251,000, to remain available until expended,